

Internal Revenue Serv  
**memorandum**

date: FEB 21 1991

to: Group Manager, Jacksonville Appeals

from: Assistant Chief Counsel (Income Tax & Accounting)  
CC:IT&A

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subject: Determining Commencement of 3 Year Period Under Sections  
6501 and 6511

This is in response to your technical assistance request dated December 5, 1990, relating to estate taxes and sections 6501 and 6511 of the Internal Revenue Code.

Specifically, you ask when the three year period under section 6501(a) and the three year period under section 6511(a) commences in the following hypothetical estate tax situations:

1.) The statutory due date of the return was January 1, 1989. An extension of time was granted to July 1, 1989. The return was filed December 31, 1988.

2.) The statutory due date of the return was January 1, 1989. An extension of time was granted to July 1, 1989. The return was filed April 1, 1989.

Section 6081(a) of the Code and the regulations thereunder provide that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement or other document required by law or regulations.

Section 6501(a) of the Code provides the general rule that the amount of any tax must be assessed within three years after the return was filed (whether or not the return was filed on or after the prescribed date). See also section 301.6501(a)-1 of the regulations which substantially restates section 6501 of the Code.

Section 6501(b)(1) of the Code provides that, except for returns for taxes imposed by chapters 3 (withholding of tax on nonresident aliens and foreign corporations), 21 (Federal Insurance Contributions Act), and 24 (collection of income tax at source of wages), a return filed before the last day prescribed by the Code or regulations is considered as filed on the last

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day. Section 301.6501(b)-1(a) specifies that this rule is applied without regard to any extensions of time for filing.<sup>1</sup>

Section 6511(a) of the Code provides the general rule that a claim for credit or refund of an overpayment of tax must be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

Section 6513(a) provides that, for purposes of section 6511, any return filed before the last day prescribed is considered as filed on the last day and payment of any portion of the tax made before the last day prescribed for payment of the tax is considered made on such last day. Section 6513 further provides that the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer. See also section 301.6513-1(a) of the regulations which substantially restates section 6513(a) of the Code.

Thus, a return which is filed before the statutory due date is considered filed on the last day prescribed by law for filing for purposes of determining the commencement of the three year period under both section 6501 and section 6511 of the Code. A return which is filed within an extension period is governed by the general rule that date of delivery to the I.R.S. is the date of filing for purposes of both section 6501 and section 6511.

In your first hypothetical, the return was filed prior to the statutory due date for filing and, we assume, the tax was paid at the time of filing. Accordingly, because an early return is deemed filed on the last date prescribed for filing the return, which in this case is January 1, 1989, the period of limitations under both section 6501(a) and section 6511(a) would start running from January 1, 1989.

In the second hypothetical, the return was not filed early, but was filed, and the tax paid, within the extended period for filing. In this case, the more general rule applies and the period of limitations under sections 6501 and 6511 starts running from the actual date of filing, which is the date the return is received, which would be April 1, 1989.

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<sup>1</sup>Section 6501(c)(4) of the Code provides for extension of the time for assessment of any tax, except the estate tax provided in Chapter 11, when both the Secretary and the taxpayer have consented in writing. Because the questions posed here relate specifically to estate taxes, section 6501(c)(4) of the Code has not been included in this discussion.

We hope this information is responsive to your request. Should you have any questions, you may contact Christie Jacobs at FTS 566-4430.

This response is advisory only and does not represent an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case. This response is not to be furnished or cited to taxpayers or representatives and is not to serve as the basis for closing a case.

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By:                     

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